

This letter discusses the various tax liabilities of fund raising organizations and their suppliers. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

May 31, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 1, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC requests guidance on the proper collection of sales tax on fundraising sales in IL.

Fundraising Activity

ABC currently utilizes three methods of fundraising: (1) partnership cards, (2) fundraising certificates and (3) bulk doughnut sales.

The partnership cards are plastic, credit card style cards that are sold with a minimum purchase of fifty cards at a time. Generally fundraising groups make a 50% profit on each card sold (i.e. if purchased for \$5.00 and resold for \$10.00 nets a 50% profit). The customer that purchases the partnership card from the fundraising group can redeem the card for a free dozen original glazed doughnuts with the purchase of any dozen doughnuts. The card is valid for up to ten free dozen with the purchase of ten dozen. For tracking purposes, the card is punched each time a free dozen is redeemed.

The fundraising certificates are essentially paper coupons that are sold with a minimum purchase of fifty certificates at a time. They are sold at the same price as our fundraising doughnuts. The fundraising group in turn resells these certificates for the full price of a dozen doughnuts. Generally fundraising groups make a 50% profit on each certificate sold (i.e. if purchased for \$2.50 and resold for \$5.00 nets a 50% profit). The customer that purchases the certificate from the fundraising group can redeem the certificate for one dozen original glazed doughnuts at any participating ABC location.

Doughnuts are sold by the dozen, with the minimum purchase being fifty dozen. Generally fund raising groups make a 50% profit on each dozen (i.e. if purchased for \$2.50 and resold for \$5.00 nets a 50% profit).

The customers that ABC targets for these fundraising sales are not-for-profit organizations such as churches, schools, colleges, junior colleges and universities (supported either in whole or in part by the state), private schools, and other community organizations within schools such as PTA, athletic clubs and service clubs.

Request for Guidance

In the interest of ensuring that the correct amount of sales tax is collected on such sales, ABC requests guidance on the following:

- (1) Is there any individual or organization mentioned above that should be charged sales tax when either partnership cards or fundraising certificates are sold to them?
- (2) Are there any restrictions on these sales, such as number of fundraising sales per year per customer, or the method of payment?
- (3) Similarly, is there any individual or organization mentioned above that should be charged sales tax when fundraising doughnuts are sold to them?
- (4) Are there any restrictions on these sales, such as number of fundraising sales per year per customer, or the method of payment?
- (5) Does an organization have to be exempt under IRC 501(c)(3) in order to be a qualifying nonprofit organization for purposes of the sales tax?

Any help that you could give would be appreciated.

DEPARTMENT'S RESPONSE:

The sale of coupon books or gift certificates is not subject to Illinois sales tax. Coupons and gift certificates represent an intangible right to purchase merchandise at some future time and are not subject to Illinois sales tax. However, if a vendor is reimbursed in full or in part, for the value of the coupon or gift certificate, the reimbursement amount will be part of the vendor's gross receipts that are subject to sales tax. See 86 Ill. Adm. Code 130.2125(b)(2).

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E-number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E-number are exempt, not sales to individual members of the organization.

Organizations that have E-numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. In regard to sales to members, please note that the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. Organizations could use their E-numbers to purchase items for such limited exempt

sales. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, which describes the requirements for validly executed Certificates of Resale.

Section 130.2009 of Department's administrative rules also describe an exemption for gross receipts from proceeds from the sale of personal property, including food, purchased through fundraising events for the benefit of a public or private elementary or secondary school, a group of those schools, or one or more school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children. See 86 Ill. Adm. Code 130.2009.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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